

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-112

In the Matter of

Amendment of Part 74 of the
Commission's Rules to Provide for
Satellite and Terrestrial Microwave
Feeds to Noncommercial Educational
FM Translators

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1988;

Released: April 15, 1988

By the Commission:

INTRODUCTION

1. By this *Further Notice of Proposed Rule Making (Notice)*, the Commission is proposing to amend its rules to permit all noncommercial educational FM translators assigned to reserved frequencies (channels 200-220) to rebroadcast signals that are relayed by any technical means.¹ Under the current rules, such translators are limited to the rebroadcast of signals received directly off-the-air from their primary station or another translator.² In the *Report and Order* in this proceeding, which we are adopting today in a separate action, we are modifying this rule to provide authority for noncommercial educational translators assigned to reserved channels and owned and operated by their primary stations to use alternative signal delivery methods, including but not limited to satellite and microwave facilities.³ The rule change proposed herein would extend this authority to noncommercial translators that are owned and/or operated by parties other than their primary station.

BACKGROUND

2. The FM translator service was instituted in 1970 as a means to supplement primary service provided by full service FM stations. FM translators retransmit the signals of a full service station on another frequency at low output power. As provided in Section 74.1231 of the Commission's rules, FM translators are authorized to extend radio service to areas which are unable to receive satisfactory service by reason of distance or terrain obstructions.⁴ To ensure that translators are used only for these specific purposes, and not to extend competitively the service area of full service FM station, the Commission imposed restrictions on ownership of translators by licensees of full service commercial FM stations.⁵ The Commission found there to be less potential for competitive harm to full service noncommercial FM stations by non-commercial translators and therefore did not impose ownership restrictions on noncommercial translators. As part

of these rules, the Commission also restricted both commercial and noncommercial stations to rebroadcasts of signals received directly over-the-air. However, it did not articulate its reasoning for extending this provision to noncommercial translators.

3. On October 31, 1985, the Moody Bible Institute of Chicago (Moody) filed a Petition for Rule Making requesting that the Commission amend its rules to allow licensee owned and operated noncommercial FM translators operating on reserved channels to receive signals fed by satellite or terrestrial microwave facilities. In response to this petition, the Commission issued the *Notice of Proposed Rule Making (Notice)* in this proceeding, therein proposing to amend its rules specifically as requested by Moody.⁶

4. In the *Report and Order*, we found that expanding the allowable means of signal delivery for noncommercial translators would benefit the public by increasing service to unserved and underserved areas and would improve the quality of existing service, but would not change the secondary nature of the translator service. We also observed that it appeared to be desirable to permit all noncommercial FM translators assigned to reserved channels to use alternative means of signal delivery. However, because a more general relaxation of the signal delivery restriction was not contemplated in the *Notice*, we did not have an appropriate record upon which to base such an action.

DISCUSSION

5. We believe that it is desirable to extend the authorization for use of alternate means of signal delivery to non-licensee owned or operated noncommercial FM translator facilities. This rule change would offer the same benefits as our action in the *Report and Order*. That is, it would facilitate the provision of noncommercial radio service to unserved and underserved areas and the improvement of service by existing noncommercial translators. As we recognized in the *Report*, the existing restrictions on the permissible means of signal delivery limit both the area which can be served by noncommercial FM stations and, in many areas, the quality of the signal that can be received by the public. Maintaining a restriction on signal delivery to non-licensee owned and/or operated translator stations likewise limits the areas which may be served by noncommercial FM stations and the quality of service that can be provided by many translators.

6. We also believe that extension of the authority to use alternative signal delivery means to all noncommercial translators may be more effective in promoting service to remote areas than the more limited change adopted in the *Report and Order*. Local organizations in remote communities may be more attuned to the need for noncommercial service in their area and more willing to pursue the construction and operation of a translator than the licensee of a full service station that is located in a distant community. In our review of the record compiled as a result of the *Notice* in this proceeding, it has become apparent that continuing to restrict the means of signal delivery for non-licensee owned translators could, effectively, keep noncommercial radio service from many areas where it is most needed. Such a result is inconsistent with the purpose of the translator service and of the rule changes adopted in the *Report and Order*. We recognize, however, that there may be a concern that local non-commercial stations should be given the opportunity to

use translators to fill in their respective service areas, or even extend their service to adjacent areas, before permitting third party acquisition of the translator. Therefore, we solicit comment on whether the Commission should adopt procedures that would give local broadcasters priority in acquiring translators located within their 1 mv/m contour. Interested parties are asked to address whether such a policy should be implemented through a filing window priority period or some form of competitive preference.

7. This proposed extension of authority is not intended to alter the secondary nature of the translator service. As we indicated in the *Report and Order*, translators will continue to be authorized on a secondary, non-interference basis. In addition, we do not believe that the processing of new translator applications which may result from the proposed rule change will adversely affect the processing of applications for new full service stations.⁷

8. Accordingly, we propose to amend Section 74.1231 of our rules to provide that all noncommercial translators assigned to reserved channels may receive signals for rebroadcast via any technical means the translator licensee deems suitable including microwave and satellite facilities as set forth in the attached Appendix. We request comment on all aspects of this proposal.

9. In order to realize the full benefits of this proposal and the rule change adopted in the *Report and Order*, we intend to allow broadcast auxiliary intercity relay microwave facilities to be used to deliver signals to noncommercial translators.⁸ In the *Notice* in this proceeding, we proposed to authorize intercity relay stations that serve noncommercial translators on a parity basis with broadcast auxiliary stations that serve full service stations. However, we recognize that the broadcast auxiliary frequencies are congested now in many areas, especially in the larger markets, and that the rule changes we are making in this proceeding likely will increase the demand for these frequencies. We therefore question whether it would be desirable to treat broadcast auxiliary stations that carry programming to noncommercial translators the same as such stations that carry programming to full service stations. We solicit comment on whether authorization of broadcast auxiliary channels for use in conjunction with a translator station should be made on a secondary basis to minimize the impact on the availability of broadcast auxiliary facilities for use in delivery of signals to full service stations, or whether, with respect to these channels, translators should enjoy the same status as broadcast stations. A secondary authorization would provide that broadcast auxiliary channels could be used to deliver signals to noncommercial translators where such use would not interfere with use of those channels to serve full service stations.⁹ This secondary authority would be similar to that which we recently provided for use of broadcast auxiliary facilities in conjunction with FM booster stations in MM Docket No. 87-13.¹⁰ As a starting point for discussion, we have set forth proposed amendments to Sections 74.501, 74.531 and 74.532 of our rules that would authorize broadcast auxiliary station use with noncommercial translators on a secondary basis in the Appendix.

PROCEDURAL MATTERS

Regulatory Flexibility Act - Initial Analysis

10. *Reason for Action.* Permitting noncommercial educational FM translators to receive signals distributed by any technical means is expected to increase radio service to areas that are currently underserved.

11. *Objective.* The Commission is proposing to modify the types of signals which noncommercial educational FM translators may receive for rebroadcast in order to increase the diversity of radio programming available to many segments of the population.

12. *Legal Basis.* The proposed amendment is authorized under Section 303 of the Communications Act of 1934, as amended.

13. *Description, Potential Impact and Number of Small Entities Affected.* Permitting all noncommercial educational FM translators to use alternative means of signal delivery other than direct over-the-air reception of broadcast signals is expected to benefit radio listeners, licensees of noncommercial stations and translators not owned and/or operated by their primary station. Signals delivered by facilities such as microwave links, leased-access lines, and satellite stations are often more dependable than direct transmissions and can reach more distant locations with a high quality signal. The public would benefit from the introduction of new service in areas that now lack adequate radio service. We do not know the number of local organizations that will avail themselves of the opportunity to use these additional technologies to bring programming to their noncommercial translators. However, any effects of this rule change would be expected to be only positive in nature, as we do not contemplate requiring the use of alternate signal delivery methods that would be authorized under this proposal.

14. *Federal Rules which Overlap, Duplicate or Conflict with this Rule.* None.

15. *Significant Alternatives.* The alternative is to maintain the current rule. The Commission believes that to do so will hinder the extension of noncommercial radio service to underserved areas. Further, the affected noncommercial educational FM licensees will be deprived of the opportunity to use a less expensive and superior technology.

16. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective:* None.

17. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and except for the additional applications expected to be received, will not increase or decrease burden hours imposed on the public.

18. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public

notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or abduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

19. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

20. Pursuant to applicable procedures set forth in §§1.415, 1.419 and 1.49 of the Commission's rules, interested parties may file comments on or before June 6, 1988, and reply comments on or before June 21, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may consider information not contained in the comments provided that such information or a written indication of the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

21. To participate formally in this proceeding, participants must file an original and 5 copies of all comments, reply comments and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original and 11 copies must be filed. To participate informally in this proceeding, participants may submit one copy of their comments. Docket Number 83-670 should be specified in the heading. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

22. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis (IFRA) of the expected impact of these proposed policies and rules on small entities. The IFRA is set forth above. Written comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Further Notice of Proposed Rule Making / Notice of Inquiry*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

23. The Secretary shall cause a copy of this *Further Notice of Proposed Rule Making / Notice of Inquiry* including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §601 *et seq.*).

24. The proposed rule change contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

25. Authority for this proceeding is contained in Sections 4(i) and 303 of the Communications Act of 1934 as amended.

26. For further information regarding this proceeding, contact Tatsu Kondo, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Part 74 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 74 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.501 is proposed to be amended by revising paragraph (b) to read as follows:

§74.501 Classes of aural broadcast auxiliary stations.

* * * * *

(b) *Aural broadcast intercity relay station.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio broadcast stations and their co-owned FM booster stations, between noncommercial educational FM radio stations and noncommercial educational FM translator stations assigned to reserved channels (Channels 200 to 220), or other purposes as authorized in §74.531.

3. 47 CFR 74.531 is proposed to be amended by redesignating paragraphs (c) through (g) as (d) through (h) and adding new paragraph (c) to read as follows:

§74.531 Permissible service.

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between a noncommercial educational FM station and a noncommercial educational FM translator station assigned to a noncommercial educational reserved channel (Channels 200 to 220). This use shall not interfere with or otherwise preclude use of these broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) above.

4. 47 CFR 74.532 is proposed to be amended by revising paragraph (a) to read as follows:

§74.532 Licensing requirements.

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations other than international broadcast stations, and for use with broadcast stations, noncommercial educational FM translator stations assigned to reserved channels or FM booster stations owned entirely by or under common control of the licensee of the primary station.

5. 47 CFR 74.1231 is proposed to be amended by revising paragraph (b) to read as follows:

§74.1231 Purpose and permissible service.

(b) Except as set forth in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of a primary FM broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator station operating on a reserved channel (channels 200 to 220) may use alternative signal delivery means, including, but not limited to, satellite and microwave facilities.

FOOTNOTES

¹ This action does not address the use of alternative signal delivery technology by noncommercial translators operating in the non-reserved band. In view of the fact that commercial and noncommercial FM translators compete for the same channel space in the non-reserved portion of the FM band, we do not believe it is desirable to consider the use of alternate signal delivery technology by noncommercial translators operating on non-reserved channels separate from that of commercial translators. Accordingly, we are addressing the issue of use of alternate signal delivery technology by both commercial and noncommercial FM translators operating on non-reserved channels in the separate proceeding we are initiating today to undertake a comprehensive reevaluation of the role of FM translators in the radio broadcasting service. See *Notice of Inquiry* in MM Docket No. 88-140, FCC 88-120, adopted March 24, 1988.

² See 47 CFR §74.1231(b).

³ See *Report and Order* in MM Docket No. 86-112, FCC 88-125, adopted March 24, 1988.

⁴ See 47 CFR §74.1231.

⁵ See 47 CFR §74.1232.

⁶ See *Notice of Proposed Rule Making* in MM Docket No. 86-112, adopted April 3, 1986, 51 FR 15026.

⁷ We also note that in conjunction with our comprehensive reevaluation of the role of FM translators in the radio broadcast service, we are imposing a general "freeze" on the acceptance of applications for new FM translator stations pending final action in that proceeding. See *Notice of Inquiry* in MM Docket No. 88-140, *supra* at n. 1. However, we are providing an exception to the general freeze on translator applications to permit the filing of new noncommercial, educational FM translators seeking assignment to channels on the reserved frequency band (channels 200-220). This will permit the implementation of the noncommercial signal delivery technology rule changes adopted in the *Report and Order*. We also are providing an exception to the freeze to permit the filing of applications for stations that would be mutually exclusive with an application that is exempt from the freeze.

⁸ In this regard, private and common carrier microwave and satellite facilities are permitted to provide this type of service and, therefore, rule changes are not necessary to allow noncommercial translators to use those facilities for delivery of program signals.

⁹ Until this question is resolved, we will accept applications for aural broadcast auxiliary stations to be used to transmit the signal of a primary station to its noncommercial educational translators subject to the condition that such use be on a secondary basis with respect to use of such channels in conjunction with full service stations. See *Report and Order* in MM Docket No. 86-112, *supra*, note 2.

¹⁰ See *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625 (August 16, 1987).